

EMPLOYMENT APPEALS BOARD DECISION
2016-EAB-0746

Affirmed
Disqualification

PROCEDURAL HISTORY: On May 12, 2016, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision # 82420). Claimant filed a timely request for hearing. On June 7, 2016, ALJ Hoppe conducted a hearing, and on June 8, 2016 issued Hearing Decision 16-UI-61341, affirming the Department's decision. On June 22, 2016, claimant filed an application for review with the Employment Appeals Board (EAB).

We considered claimant's written argument and the entire hearing record.

FINDINGS OF FACT: (1) Willamette Valley Bank employed claimant from July 6, 2015 until April 5, 2016 as a loan production coordinator in the employer's residential lending office in Medford, Oregon.

(2) Claimant had chronic migraine headaches. Exhibit C. The migraines were sometimes triggered by work stress.

(3) Claimant was dissatisfied with the type and lack of training she received from the employer because she did not receive training on the entire loan process, but instead received limited, "piecemeal" training from a coworker who had never performed claimant's job, and had time constraints due to her own workload. Transcript at 16. The employer expected claimant to learn how to perform her duties on the job, while performing her duties.

(4) Before February 2016, claimant's office manager requested training on claimant's behalf from claimant's direct supervisor, an assistant vice president. When claimant's supervisor did not respond, claimant emailed her in February 2016, again asking for training. Claimant's supervisor told claimant she could attend the employer's next new hire training in Portland in early March 2016 because another loan production coordinator was going to be trained before she started work with the employer.

(5) The supervisor canceled claimant's trip to Portland for the training due to the cost of the flight from claimant's town, Medford, to Portland. The supervisor told claimant she would speak to the employer's vice president about other training options.

(6) Prior to March 22, 2016, claimant received no verbal or written warnings.

(7) On March 22, 2016, the employer gave claimant a "final" written warning stating that the employer might discharge claimant unless she showed "immediate and sustained improvement" in performing her work responsibilities relating to 21 different areas. Exhibit A. On March 22, 2016, the vice president for claimant's department told claimant the employer expected claimant to show improvement in the issues identified in the final warning by March 25, 2016, the end of the week, but did not say the employer already had plans to discharge claimant. Claimant told the vice president she was committed to improving her performance to the best of her ability. The employer did not give claimant any other warnings or take other adverse employment action against claimant after March 25, 2016.

(8) In response to the March 22 warning, claimant told the vice president that she had been requesting training regarding the job duties listed in the warning, and had not been provided sufficient training to perform her duties. Claimant told the vice president that an "opportunity to sit with" another production coordinator for training purposes would be "invaluable" in helping claimant meet the employer's performance expectations. Exhibit C. The vice president supervised claimant's immediate supervisor. The supervisor and vice president planned for claimant to participate in webinar training in March 2016. They did not tell claimant about the webinar plan or other new training opportunities before claimant left work.

(9) Claimant was out of work from March 28, 2016 to April 5, 2016 due to a four-day migraine and a non-work related injury.

(10) On April 5, 2016, claimant quit work to avoid a potential discharge.

CONCLUSIONS AND REASONS: We agree with the ALJ and conclude claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause" is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant had chronic migraines, a permanent or long-term physical impairment as defined at 29 CFR § 1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

Although claimant suffered from chronic migraines, claimant's testimony shows she left work because she was dissatisfied with the training she received for her position and to avoid a potential discharge,

and not due to the impact of her work on her medical condition. *See* Transcript at 11-12. Nor does the record show that claimant's medical condition was aggravated from her work to the extent that she had no reasonable alternative to leave work when she did.

Although claimant showed that training was inadequate for her to perform her best work, she failed to show that the lack of training created a grave situation for her, including that her discharge was reasonably certain and likely imminent, and that a discharge would significantly interfere with her ability to find another job in banking in the future. Although the employer clearly expected claimant to improve her performance after the March 22, 2016 warning, the employer's witness testified at hearing that the employer did not have plans to discharge. Transcript at 12. The vice president did not tell claimant her discharge was inevitable when she discussed claimant's March 22 warning with her, the employer did not take any adverse employment action against claimant after the March 25 deadline for claimant to improve her performance, and the employer was planning training for claimant when she quit.¹ Moreover, the record contains no evidence to show that the impact of a discharge from a loan office job would make it difficult for her to find another job in the banking industry in the future.

For these reasons, claimant failed to establish that she had no reasonable alternative but to quit work when she did. We therefore conclude that claimant quit work without good cause, and is disqualified from receiving unemployment insurance benefits because of her work separation.

DECISION: Hearing Decision 16-UI-61341 is set aside, as outlined above.

Susan Rossiter and D. P. Hettle;
J. S. Cromwell, not participating.

DATE of Service: July 29, 2016

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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¹ At hearing, claimant argued that asking for training again after the March 22 warning was "a moot point" because she had asked for training repeatedly before. Transcript at 25. We disagree, because claimant's complaint to the vice president prompted the employer to try to arrange for claimant to attend the training in Portland, showing that the employer was not ignoring claimant's requests. Claimant had the reasonable alternative of asking the employer again if it was planning different, more affordable, training.